IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7699 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JANTA BRICKS MFG CO

Versus

UNION OF INDIA

Appearance:

MS BIRLA for MR BM MANGUKIYA for Petitioner

MR JC SHETH for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 26/06/2000

ORAL JUDGEMENT

1. Heard the learned counsel for the parties. In this Special Civil Application, prayer has been made for a direction to the respondent to give recoupment of coal

weighing 6.2 M.T. as per the Order passed by this Court on 31st January, 1989. The Special Application has been admitted after notice to the respondents on 22nd January, 1990. The respondents have not cared to file their reply to the Special Civil Application.

2. The petitioner booked coal wagon bearing No.SR-38224 for transporting steam coal. The said Railway wagon was booked under R.R. bearing No.850598 dated 30th August, 1984. The said wagon was to be delivered at Asarwa, Ahmedabad. The petitioner submits that the coal wagon was not delivered at the destination to the petitioner. Accordingly, it lodged a claim with respondent no.3. The respondent no.3 by order dated 26th May, 1987 informing the petitioner that the petitioner would be recouped of coal by way of giving coal dropping of equal quantity from the Sabarmati Transhipment point towards its full and final settlement of the claim. This has not been done by the respondents. The petitioner was informed under letter dated 26th May, 1988 that the earlier order made is cancelled. The petitioner, at that stage, approached to this court by filing a Special Civil Application No.3410 of 1988. This petition was came to be decided on 31st January, 1989 along with other companion matters. This Court has given a direction to the respondent to deliver to the petitioner coal of same quality and quantity having same grade without charging any extra freight and the costs within two months from the date of the Order. This order has not been complied with and the petitioner filed a n application, M.C.A. No.318 of 1989 for taking actions against the respondent for committing the contempt of the Court's order.

3. During the pendency of contempt petition, the respondent offered a wagon bearing No.SE 85563 on 13th April, 1989. This coal wagon was not having full load of coal. The petitioner requested the Railway Administration to give weighment of the coal contained of the said wagon. It has been granted. After weighment, it was found that the said wagon contained only 49.8 M.T. coal instead of 56 M.T. The petitioner has taken the delivery of said wagon without prejudice to its rights. As a result of this, the Court has dismissed the contempt petition as it was not taken to be a case of willful contempt of Court's order.

4. It is admitted by the respondents by not filing reply to the Special Civil Application that instead of 56 M.T. of the coal, the petitioner has been given only 49.8 M.T. thereof and this deficit of 6.2 mt. of the coal to be made good by the respondents. The learned

counsel for the respondents also submits that in compliance of the order of this court, the petitioner is to be given 56 M.T. of the coal by the respondents. The respondents are under legal obligation to make good this deficit of the weight of the coal.

5. I find merits in the contention of the learned counsel for the respondents that the respondents may not have loose coal, but only on this ground, they cannot be relieved of from their liability to make good this deficit or shortfall of the coal weight. It is understandable if the loose coal is not available, then the value of that coal is to be paid to the petitioner. The question does arise how this coal is to be valued and for which there cannot be any difficulty to find out what was the cost of the coal per M.T. on the day on which this this consignment was booked at the booking place and it is to be taken as the cost per M.T. and accordingly, to find out the cost of this 6.2 M.T. of coal. The petitioner has suffered loss of this amount for all these years. Secondly, the petitioner has filed a petition earlier also and then only, his claim was accepted by the respondents. That order of this Court was not complied with and the petitioner has to file a contempt petition. Only after filing of the contempt petition, the respondents have given part of the weight of coal to the petitioner and this action of the respondents compel him to file this petition. In view of these facts, for loss of this money and for getting the same, the cost which he has incurred in filing of the petitions, the petitioner is to be reasonably compensated. So far as the first part is concerned, on the amount of the cost of the 6.2 M.T. of coal, the petitioner is to be paid by the respondent interest at the rate of 12 % per annum. So far as the cost of the litigations is concerned, only for this litigation, the cost can be awarded.

6. In the result, this Special Civil Application is disposed of in terms that the respondents to find out what was the cost of 1 M.T. on the day on which this consignment was booked by the petitioner at the starting point. Thereafter, on the basis of this cost of 1 M.T., the respondents have to find out the cost of this 6.2 M.T. On this amount of cost of this 6.2 M.T., the respondents to calculate interest payable to the petitioner @ 12% per annum from 1st of October, 1984 to the date of payment of the amount. This exercise is to be undertaken and completed within a period of two months from the date of receipt of writ of this order and within one month next, the amount is to be paid, so determined, to the petitioner. The respondents are further directed

to pay Rs.2000/- as the costs of this petition to the petitioner. Rule and Special Civil Application stand disposed of accordingly.

(S.K. Keshote, J.)

(kamlesh)